

## § 500.202

## 13 CFR Ch. V (1–1–00 Edition)

an application pursuant to § 500.207, in making a determination to issue a Guarantee to a Lender, the Board will assess:

(1) The Lender's level of regulatory capital, in the case of banking institutions, or net worth, in the case of investment institutions;

(2) Whether the Lender possesses the ability to administer the loan, as required by § 500.211(b), including its experience with loans to oil and gas companies;

(3) The scope, volume and duration of the Lender's activity in administering loans;

(4) The performance of the Lender's loan portfolio, including its current delinquency rate;

(5) The Lender's loss rate as a percentage of loan amounts for its current fiscal year; and

(6) Any other matter the Board deems material to its assessment of the Lender.

(c) In the case of the refinancing of an existing credit, the applicant must be a different lender than the holder of the existing credit.

### § 500.202 Loan amount.

The aggregate amount of loan principal guaranteed under this Program to a single Qualified Oil and Gas Company may not exceed \$10 million.

### § 500.203 Guarantee percentage.

A guarantee issued by the Board may not exceed 85 percent of the amount of the principal of a loan to a Qualified Oil and Gas Company.

### § 500.204 Loan terms.

(a) All loans guaranteed under the Program shall be due and payable in full no later than December 31, 2010.

(b) Loans guaranteed under the Program must bear a rate of interest determined by the Board to be reasonable. The reasonableness of an interest rate will be determined with respect to current average yields on outstanding obligations of the United States with remaining periods of maturity comparable to the term of the loan sought to be guaranteed. The Board may reject an application to guarantee a loan if it determines the interest rate of such loan to be unreasonable.

(c)(1) The performance of all of the Borrower's obligations under the Loan Documents shall be secured by, and shall have the priority in, such Security as provided for within the terms and conditions of the Guarantee.

(2) Without limiting the Lender's or Borrower's obligations under paragraph (c) of this section, at a minimum, the loan shall be secured by:

(i) A fully perfected and enforceable security interest and or lien, with first priority over conflicting security interests or other liens in all property acquired, improved, or derived from the loan funds; and

(ii) A fully perfected and enforceable security interest and or lien in any other property of the Borrower's pledged to secure the loan, including accessions, replacements, proceeds, or property given by a third party as Security for the loan, the priority of which shall be, at a minimum, equal in status with the existing highest voluntarily granted or acquired interest or lien;

(3) The entire loan will be secured by the same Security with equal lien priority for the guaranteed and the unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference over the guaranteed portion.

(4) An Applicant's compliance with paragraph (c)(2) of this section does not assure a finding of reasonable assurance of repayment, or assure the Board's Guarantee of the loan.

(d) An eligible Lender may assess and collect from the Borrower such other fees and costs associated with the application and origination of the loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such other fees and costs into consideration when determining whether to offer a Guarantee to the Lender.

[64 FR 57947, Oct. 27, 1999, as amended at 64 FR 72024, Dec. 23, 1999]

### § 500.205 Application process.

(a) *Application process.* An original application and three copies must be received by the Board no later than 8 p.m. EST, January 31, 2000, in the U.S. Department of Commerce, Washington,

DC 20230. Applications which have been provided to a delivery service on or before January 30, 2000, with "delivery guaranteed" before 8 p.m. on January 30, 2000, will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed in this section guaranteed prior to the closing date and time. A postmark of January 30, 2000, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

(b) Applications shall contain the following:

(1) A completed Form, "Application for Oil and Gas Guarantee Loan";

(2) The information required for the completion of Form "Environmental Assessment and Compliance Findings for Related Environmental Laws" and attachments, as required by § 500.206(a)(2)(i)(D), unless the project is categorically excluded under § 500.206(b);

(3) All Loan Documents that will be signed by the Lender and the Borrower, if the application is approved, including all terms and conditions of, and Security or additional Security to assure the Borrower's performance under, the loan;

(4) Certification by the chairman of the board and the chief executive officer of the Borrower acknowledging that the Borrower is aware that the Lender is applying to the Board for a Guarantee of a loan under the Program, as described in the Loan Documents, and agreeing to permit audits by the General Accounting Office, its designee, an independent auditor acceptable to the Board prior to the issuance of the Guarantee and annually thereafter while such guarantee is outstanding;

(5) The Lender's full written underwriting analysis of the loan to be guaranteed by the Board;

(6) A certification that the Lender has followed the same loan underwriting analysis with the loan to be guaranteed as it would follow for a loan not guaranteed by the Government; and a certification by the Lender, that the loan, Lender, and Borrower

meet each of the requirements of the Program as set forth in the Act and the Board's rules in this part;

(7) A description of all Security for the loan, including, as applicable, current appraisal of real and personal property, copies of any appropriate environmental site assessments, and current personal and corporate financial statements of any guarantors for the same periods as required for the Borrower. Appraisals of real property shall be prepared by State licensed or certified appraisers, and be consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation. Financial statements of guarantors shall be prepared by independent Certified Public Accountants;

(8)(i) An independent oil and gas company, as defined in section 201(c)(3)(A)(i) of the Act, is required to submit:

(A) For loans less than \$5 million, three years of financial statements reviewed by a certified public accountant following generally accepted accounting principles, as well as any interim financial statements; or

(B) For loans of \$5 million or greater, three years of financial statements must be submitted. The most recent year's statement must be audited by an independent certified public accountant. Statements from the prior two years must be reviewed by a certified public accountant following generally accepted accounting principles. In addition, any interim financial statements and associated notes must be submitted as well.

(ii) A service company, as defined in section 201(c)(3)(A)(ii) of the Act, is required to submit consolidated financial statements of the Borrower for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes.

(9) A five year history and five year projection for revenue, cash flow, average realized prices and average realized production costs. If the loan funds are to be used to purchase substantial assets of an existing firm, a pro forma

balance sheet at startup, and five years projected year end balance sheets and income statement at start-up;

(10) Documentation that credit is not otherwise available to the borrower under reasonable terms or conditions sufficient to meet its financial needs, as reflected in the financial or business plan of that company. The Lender must provide with its application those items required by § 500.200(b);

(11) Documentation sufficient to demonstrate that the Lender is eligible under § 500.201(a) and to allow the Board to make a determination to issue a Guarantee to such Lender as set forth in § 500.201(b); and

(12) A report as to the Borrower's designation of the nature and value of project reserves from an independent petroleum engineer acceptable to the Board.

(c) No Guarantee will be made if either the Borrower or Lender has an outstanding, delinquent Federal debt until:

(1) The delinquent account has been paid in full;

(2) A negotiated repayment schedule is established and at least one payment has been received; or

(3) Other arrangements, satisfactory to the agency responsible for collecting the debt, are made.

[64 FR 57947, Oct. 27, 1999, as amended at 64 FR 72024, Dec. 23, 1999]

**§ 500.206 Environmental requirements.**

(a)(1) *In General.* Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and Executive Orders. Therefore, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Actions requiring compliance with NEPA.* (i) The types of actions classified as "major Federal actions" subject to NEPA procedures are discussed generally in 40 CFR parts 1500 through 1508.

(ii) With respect to this Program, these actions typically include:

(A) Any project, permanent or temporary, that will involve construction and/or installations;

(B) Any project, permanent or temporary, that will involve ground disturbing activities; and

(C) Any project supporting renovation, other than interior remodeling.

(3) *Environmental information required from the Lender.* (i) Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities. The Lender may obtain this information from the Borrower. Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the loan at issue;

(C) Any environmental review prepared by Federal, State, or local agencies relevant to the loan at issue;

(D) The information required for the completion of Form XYZ, "Environmental Assessment and Compliance Findings for Related Environmental Laws;" and

(E) Any other information that can be used by the Board to ensure compliance with environmental laws.

(ii) All information supplied by the Lender is subject to verification by the Board.

(b) The regulations of the Council on Environmental Quality implementing NEPA require the Board to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public. See 40 CFR 1506.6(b). Environmental information concerning specific projects can be obtained from the Board by contacting: Executive Director, Emergency Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Washington, DC 20230.

(c) *National Environmental Policy Act.*

(1) *Purpose.* The purpose of this paragraph (c) is to adopt procedures for